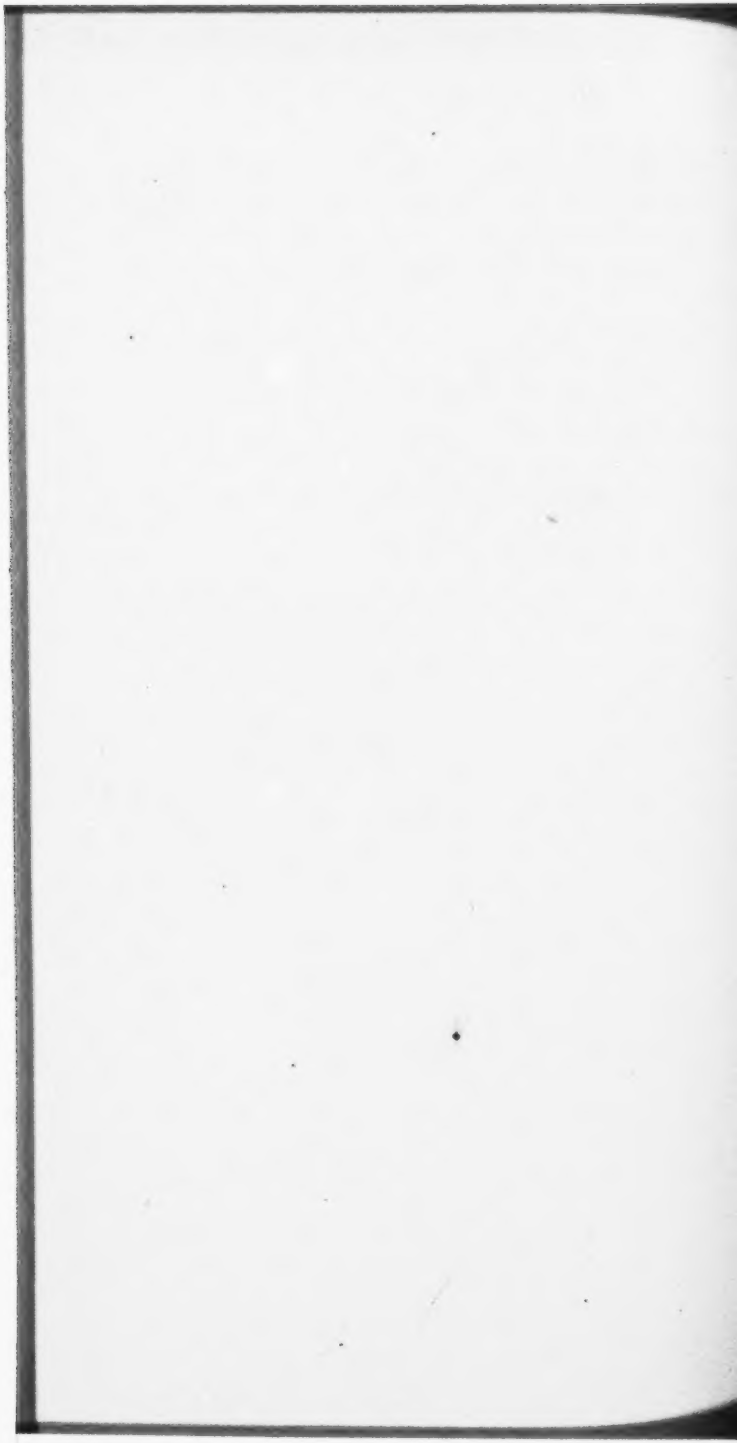

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No. 962. 62

By. of Senator for Def'ts

Filed Mar. 26, 1900

Office Supreme Court U. S.
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 962.

H. ABRAHAM & SON et al.,

vs.

MARIE L. CASEY, Administratrix, &c.

Brief for Defendants in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 301.

H. ABRAHAM & SON ET ALS.

versus

MARIE L. CASEY, ADMINISTRATRIX,

BRIEF FOR DEFENDANT IN ERROR.

There appear two assignments of error in this cause. Rec., p. 255.

"*First.* That this Court (the Supreme Court of Louisiana) erred in overruling the peremptory exception of *res judicata* set up by defendants against the demands of plaintiff, which were based upon two decrees of the Circuit Court of the United States, specially pleaded in this case, one of which decrees was in the matter of *Laurent Lacassagne vs. F. Chapuis, executor, etc.*, taken by appeal to the Supreme Court of the United States and there affirmed in favor of petitioners herein and against said Lacassagne; that said decree of the Supreme Court of the United States maintained the writ of possession under which the said Lacassagne was ejected from the possession of the property in controversy in this case, and petitioners put in possession thereof."

"*Second.* That this Court (the Supreme Court of Louisiana) erred in holding that said defenses were without effect against the said Laurent Lacassagne and his legal representatives."

Reply.

The decision of this Court in Lacassagne vs. Chapuis, 144 U. S., page 119, held, under an action by plaintiff *in equity*, that the dismissal of the bill in equity absolutely, must be "*so modified as to declare that it is without prejudice to an action at law*" (p. 126).

Following that decree rendered at the October term, 1891, the action *at law* was filed in the instant case, in November, 1895 (Rec., pages 1–3).

It was met by exception of plaintiffs in error, under your Honors' aforesaid ruling as *res judicata* (Rec., pages 7, 8) and sustained by the trial Court, page 45, but reversed by the Supreme Court of the State, and remanded for trial on the merits (Rec., pages 118, 122).

Upon the trial on the merits, page 137, the State Court disregarded the decree of the Supreme Court of the State and held against the plaintiff (page 238).

Plaintiff again appealed to the Supreme Court of the State, which *reversed* the lower court, and decreed in favor of plaintiff on his claim *at law*, with the rights incident thereto (page 248).

From this decree, the present writ is before the Court.

ARGUMENT.

The Supreme Court of Louisiana in its decree presently appealed from, held, among other things, the following.

We quote from its decision, pages 249–252:

"The case found its way to the Supreme Court of the United States, and that tribunal held that the remedy of Lacassagne was at law, not in equity, and that if the mortgage was superior to the right of the widow Cavailhez

his remedy at law was ample. The court, in its opinion, referred to the fact that his title had been acquired subsequent to the suit of the widow, and thought the article of our Code avoiding alienations of property pending suit for its recovery applied. The bill was dismissed, with full reservation of Lacassagne to enforce his rights at law."

"While this litigation was pending in the Supreme Court, the Widow Cavailhez died, and her will constituted F. Chapuis her executor and legatee. He mortgaged the property to Abraham & Son, under whose execution the property was about to be sold."

"At this juncture Lacassagne, remitted by the decree of the United States Supreme Court to the assertion of his rights at law, enjoined the sale under the execution of Chapuis' creditors, setting up his title to the property.

This is the suit now before us on a second appeal, the first having been determined by us in 1896 (48th An. 1160).

"On the previous appeal the defense pleaded *res judicata*, based on the decree obtained in the suit of Widow Cavailhez against Mrs. Remick. That defense, as well as the other aspects of the case argued, received our attention. We held that the plea of *res judicata* based on a decree in a suit to which Lacassagne was no party conld not be sustained as against him. The argument there took a wide range and asserted in its general effect that the mortgage granted by the recorded owner before the claims of the widow Cavailhez were made known could not be enforced by the seizure and sale of the property because of the suit of Mrs. Cavailhez to establish her rights as his widow, based on the marriage in France in 1833."

"But our decision maintained that the mortgagee, in good faith acquiring his mortgage on the faith of the recorded title based on the conveyance of J. B. Cavailhez, could not be affected by any fraud imputed to Cavailhez with respect to the wife it is claimed he married in France before he came to Louisiana, and that the enforcement of such a mortgage created prior to the suit of the widow, was not within the inhibition of alienation of property

pending suit for its recovery. Our decree overruling the plea of *res judicata* remanded the case for trial on the merits."

"On the second trial the defendant supplemented their pleadings by urging the exception of *res judicata*, based on the decree of the Supreme Court of the United States on the bill filed by Lacassagne to enjoin the writ of possession issued in the suit of the *Widow Cavailhez against Mrs. Remick*, 144 U. S. 119. On this exception, as well as on the merits, the lower court rendered judgment in defendant's favor, and the case is again before us on appeal."

" The first enquiry is as to the right conferred by the mortgage of this property to Maxwell in 1883, as the plaintiff's title is based on that mortgage, and the mortgage is based on the sale of the property in 1869 by J. B. Cavailhez. He was the " head and master," as our code expresses it, of the community. Whether married in France before he came to Louisiana and contracted the marriage here, is unimportant in testing the effect of his sale of the property involved in this controversy, in 1869. The power of disposition was his, and the title made by him and spread on the public records gave validity to any subsequent sale or mortgage created on the faith of that title."

" If the husband alienates the community property by any fraud, to the injury of his wife, the law gives to her an action against him and his heirs, but the sale by him is entirely valid as to third persons who in good faith have acquired rights on the faith of the title he spreads on the public records. It is a proposition we deem beyond reasonable controversy, that the mortgage to Maxwell, based on the title to the vendee of J. B. Cavailhez, and which had stood unquestioned on the public records for fifteen years before Widow Cavailhez asserted her rights under the marriage contracted in France, was not assailable by her. This proposition is based on the protection accorded those who act on the faith of the public records, so often recognized by our courts and of general recognition in every system of jurisprudence. It is bottomed upon the principle that the true owner, whoever he may be, is bound by the title he puts on the public records, so far as

respects third persons *bona fide* acquiring rights on the faith of that title."

"If the mortgage granted in 1883 was securely protected by law and jurisprudence, it gave to the creditor the right to foreclose it. We can not conceive that this right, so essential to the creditor, could be taken away by a suit brought afterward by the wife asserting her right to the community, subordinated, as are all her rights, to the power of the husband to mortgage or alienate the community property.

"The mortgage creditor, exerting the remedy given him by the contract, seized and sold the property for his debt, and the title passing at the sale was completely vested in the plaintiff Lacassagne."

"The contention is that the sale was void because when made the suit of the widow Cavailhez was pending. Although the Maxwell mortgage was of record when the suit was brought, she carefully abstained from making him a party. The argument seeks to apply the provision of our law which forbids alienations pending a suit to recover property to the prejudice of the plaintiff bringing the suit."

"The article of the Code embodying this provision, has clear application to cases of alienation pure and simple, not to the enforcement of rights created before the suit was brought. The mortgage created a right to seize and sell the property for the payment of the debt. Under our law the mortgage is a *quasi* alienation. The seizure and sale is the exercise of the remedy, and is the consequence of the mortgage. If, then, the mortgage is to be deemed an alienation, the title of the plaintiff is not within the scope of the provision forbidding alienations pending the suit, for the mortgage was granted before the suit."

"There are expressions in the reasoning of the United States Supreme Court which, taken literally and severed from the context and decree, may seem to give color to defendant's pretensions as to the scope and effect of that decree; but the ground that the plaintiff's remedy was at law disposed of the case and points to the decree as containing all that constitutes *res judicata* in any sense known to the law. That decree simply and only dismissed the

bill with full reservation to plaintiff to enforce his rights at law."

"Now, what right could he enforce? The mortgage had merged in the title. The Supreme Court could not have contemplated a suit on a mortgage changed into another right. To remit him to some supposed remedy on a mortgage exposed both to the defense of pre-emption and that of prescription would have been to substitute a mere shadow for the substance of Lacassagne's right. The decree reserved his legal rights given him by the mortgage. Following that decree, when Lacassagne found the property seized under the execution of the creditor of Chapuis, the legatee of the widow Cavailhez, he resorted to the remedy given him by our law. He asserted his title to the property attempted to be levied on as the property of another, and in our view adopted the only practicable method of exercising the right left to him by the Supreme Court."

"Under the mortgage granted by the head of the community, clothed with full competency to grant it wholly irrespective of whether he had or not married in France, the mortgage creditor had the right to seize and sell the property in whose hand soever it might be without regard to any change of title by suit, alienation, descent or any other mode.

Am. and Eng. Encyclop. of Law, Vol. 13, pp. 899, 900 and foot notes, *verbo Lis Pendens; Stuyvesant vs. Hone*, 1 Sandf. (N. Y.) 419; *Watson vs. Dowling*, 26 Cal. 127.

"On what theory, then, are we to hold that the suit to establish the French marriage of Cavailhez, denuded the mortgage of the right it gave the creditor to seize and sell? To so hold would be to simply change our jurisprudence and overthrow a rule of property."

"Nor do we appreciate that the Supreme Court of the United States, in the decision now pleaded as *res judicata* and as effective and intended to destroy the creditor's right to foreclose his mortgage, as sustaining any such contention. The case presented to that court was a bill in equity to restrain the execution of the writ of possession issued by *Widow Cavailhez* on her judgment against *Marceline Diaz, widow of C. H. Remick, deceased.*"

"The plaintiff here, the complainant in that suit, averred his title and possession as the basis for the relief he sought. The court held the plaintiff's remedy was at law, not in equity. We do not think the question of Lacassagne's title was passed upon or intended to be passed upon in that decision. What the Court declared and held was that, on the showing made, 'a Court of Equity can not give the plaintiff any relief until he has established his title by an act at law.' 144 U. S. 124. And all his rights with respect to such action at law were reserved to him."

"We hold the present suit to be such 'action at law' as there contemplated, coupled with injunction to prevent the property being sold under execution for the debt of another alleged not to be the owner."

"The necessary parties are before the Court to adjudicate the question of title raised, and that the suit involves the title is shown by the averments of the petition and by its prayer, which is that plaintiff be decreed the owner of the property and sent into possession thereof, etc."

"On the issue thus presented we think the case is with the plaintiff, and that his claim of ownership must be sustained and his right of possession enforced."

The ruling of your Honors in *144 U. S.* being so precise, there remains only to be replied to the inquiry as to whether or not the rights of a mortgage creditor, in good faith, found to be valid under the laws of Louisiana, can be set aside under the pleadings as presented.

The question is not novel.

Your Honors' latest decision on such question, we find in No. 71 of the October term of 1899, of *Tullis vs. Lake Erie and Western Railroad Company* delivered December 11, 1899, wherefrom we quote:

"As remarked in *Missouri, K. & T. R. Co. vs. McCann*, 174 U. S., 580, 586, 43 L. ed. 1093, 1096; 19 Sup. Ct. Rep. 755, the contention calls on this Court to disregard the interpretation given to a State statute by the

Court of last resort of the State, and, by an adverse construction, to decide that the State law is repugnant to the Constitution of the United States. But the elementary rule is that this Court accepts the interpretation of a statute of a State affixed to it by the Court of last resort thereof."

In case of the *Missouri, K. & T. R. Co. vs. McCann*, 174 U. S. 580, reading from page 586, your Honors say:

"The reasoning now relied on, then, is that, although the Supreme Court of the State of Missouri has interpreted the statute of that State as not depriving a carrier of power, on receiving an interstate shipment, to limit its liability to its own line, this Court should disregard the interpretation given to the State statute by the Court of last resort of the State, and hold that the statute means the very contrary of its import, as declared by the Supreme Court of the State, and upon such construction decide that the State law is repugnant to the Constitution of the United States. But the elementary rule is that this Court accepts the interpretation of the statute of a State affixed to it by the Court of last resort thereof. *Sioux City Trust Company vs. Trust Company*, 172 U. S. 642, and authorities there cited."

The finding of facts of the State Court, viz: that Lacassagne was no party to the proceedings invoked as *res judicata;* and that our action and proceedings thereunder were legal and proper as to facts and law, under and by virtue of Art. 2453 of the Civil Code of Louisiana, which reads:—

"The thing, claimed as the property of the claimant, can not be alienated, pending the action, so as to prejudice his right. If judgment be rendered for him, the sale is considered as the sale of another's property, and does not prevent him from being put in posssession by virtue of such judgment."—

Does not, under the views your Honors have expressed in the cases cited, render it necessary same should be reconsidered.

No Federal question was passed upon by the Supreme Court of Louisiana. It was merely the construction given to a local statute.

This court has frequently held it unnecessary to pass upon such questions.

In the case of *White* vs. *Leovy*, 174 U. S., p. 91, you said (*Syllabus*):

"From the statement of this case made by the Supreme Court of Louisiana in its opinion, quoted in the opinion of this Court, it is manifest that no Federal question was passed upon by that Court, but that its decision was put upon an independent ground, involving no Federal question, and of itself sufficient to support the judgment below; and this Court therefore dismisses the writ of error."

In your opinion it is stated:

" In Remington Paper Co. vs. Watson, 173 U. S. 443, we had occasion to repeat and affirm the rule announced in Eustis vs. Bolles, 150 U. S. 361, 370, that where we find it unnecessary to decide any Federal question, and when the State court has based its decision on a local or State question, our logical course is to dismiss the writ of error."

We pray the affirmance of the decree of the State court and dismissal of the writ of error.

Respectfully submitted,

W. S. BENEDICT,

Attorney for Defendant in Error.